IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/03/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.4324 OF 2003
and
CRL.M.P.No.1503 OF 2003.

B.Ranganathan ... Petitioner

-Vs-

1.State, rep.by
The Inspector of Police,
Vigillance & Anti Corruption,
Special Investigation Cell
(Cr.No.13/2002/pub/Hq)

2.Indian Overseas Bank,
Periyar Nagar Branch,
Chennai-82.

3.Allahabad Bank,
Jawahar Nagar Branch,
Chennai-82. ... Respondents

Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioner : Mr.R.Shanmugha Sundaram,
senior counsel & Mr.M.Muthusamy for
Mr.S.Thiruvengadam

For 1st Respondent : Mr.O.Srinath,
Govt.Advocate (crl.side)

:O R D E R

This Criminal Original Petition is filed by the petitioner praying to set side the order passed by the first respondent to freeze the accounts of not only the petitioner but also his family members held with the second and third respondents, pending investigation in Cr.No.13 /2002 on averments such as that the petitioner is arrayed as an accused in the above crime number for the alleged offence punishable under Section 13(2) r/w.13(1)(e) of the Prevention of Corruption Act, 1988 which is pending investigation with the first

respondent; that the petitioner is a Member of the Tamil Nadu Legislative Assembly elected from the Purasawalkam Assembly Constituency on behalf of the Tamil Maanila Congress Jana Nayaga Peravai; that the case has been foisted against him at the instance of the ruling party due to political animosity; that the first respondent conducted several raids at his house and business premises but was unable to unearth anything; that in such circumstances, with an ulterior motive to cripple the petitioner financially, the first respondent passed the impugned order, served on the petitioner on 10.2.2003 to freeze the bank accounts operated by the petitioner in his name and by the blood relatives and his business accounts; that he is running several businesses and is operating bank accounts in the Indian Overseas Bank, Periyar Nagar Branch and in Allahabad Bank, Jawahar Nagar Branch, Chennai-82.

2. The petitioner would give a list of those accounts sought to be frozen by the first respondent, which are as follows:

(a)B.Ranganathan,M.L.A. A/c.No.198 (b)Tmt.Nalini Ranganathan (c)B.L.Suresh Babu (d)M/s.Vinoth Agencies A/c.No.866 (e)Vinoth Constructions (P) Ltd. A/c.No.10082 (f)Vinoth Hardwares A/c.No.10039.

3. The petitioner would further submit that if all these bank accounts are frozen, he would not be able to disburse weekly wages to his employees besides being crippled from running his day-to-day life and the business since all his monetary transactions are routed through these banks; that the action of the first respondent to freeze the bank accounts held by the petitioner and his blood relatives is mala fide and arbitrary; that the first respondent seeks to freeze these bank accounts under Section 102(1) Cr.P.C., for which he has no authority; that even though authorisation is issued to the first respondent under Sections 17 and 18 of the Prevention of Corruption Act by the Superintendent of Police to conduct investigation, there is no authorisation for him to freeze the bank accounts and therefore the first respondent has clearly exceeded his authority in freezing the bank accounts of the petitioner and in the above circumstances, being left with no alternative remedy, the petitioner would state that he has approached this Court to invoke its inherent jurisdiction under Section 482 of the Cr.P.C. and to set aside the order passed by the first respondent extracted supra.

4. In the counter filed by the first respondent, it would be submitted that the petitioner is the Member of the Tamil Nadu Legislative Assembly from Purasawalkam Constituency from 1991 onwards; that he is a `public servant' as defined under Section 2(c) of the Prevention of Corruption Act, 1988; that the petitioner hails from a financially poor family and after he became M.L.A., during the year 1991, he has acquired properties by adopting corrupt and illegal means not only in his name but in the name of his wife and blood relatives, believed to be his benamies; that the petitioner has acquired properties disproportionate to his known sources of income to the tune of Rs.50,42,674/= and hence after conducting a preliminary enquiry, a case in DVAC Cr.No.3/AC/2002/HQ, under Section 13(1)(e) r/w.13(2) of the Prevention of Corruption Act, 1988 was registered against the petitioner on 16.8.2002; that the residence of the petitioner at Jawahar Nagar, 1st Main Road, Perambur and other business premises were searched and relevant documents were recovered

and sent to the Court of Principal Sessions Judge, Chennai.

5. The counter affidavit would further submit that the Investigating Officer has been properly authorised to investigate the case and inspect the Bankers Books under Sections 17 and 18 of the Prevention of Corruption Act, 1988 and as such he is competent to investigate the above case and to take every step to prosecute the petitioner in the above case; that during investigation, it was revealed that the petitioner is holding Bank accounts in his name and in the name of his wife Nalini Ranganathan, his adopted son B.L.suresh Babu and in the names of the businesses run under the names and styles (i) M/s.Vinoth Agencies, (ii) M/s.Vinoth Hardwares, (iii) M/s.Vinoth Constructions and (iv) M/s.Vinoth Construction Pvt. Ltd.; that it was also noticed that his wife and adopted son and the partners in the above mentioned businesses did not have any independent sources of income commensurate with the assets held in their name and the investments made in their names in the aforesaid businesses and the credit balances in the Bank accounts held in the names of the petitioner, his wife, his adopted son and the aforesaid businesses are the assets of the petitioner held in their names and therefore the credit balances in the Bank accounts also would form part of the assets acquired and possessed by the petitioner, which are disproportionate to his known sources of income; that under such circumstances, the prohibitory orders prohibiting the operation of Bank accounts passed and communicated by the investigating Officer in exercise of the powers conferred under Section 102 Cr. P.C. are within the powers of the investigation officer and cannot be said to be without authority; that there need not be any specific authorisation for the investigating officer to pass a prohibitory order to freeze the Bank accounts under the circumstances above stated and it is incorrect to say that the investigating officer has exceeded his authority in freezing the bank accounts of the petitioner.

6. The counter would further state that there are grounds to believe that the assets held by the petitioner in his name and in the names of others including the Bank balances in the Bank accounts in his name and in the names of others aforestated are far beyond and disproportionate to the known sources of his income and that the assets which are found to be disproportionate to the known sources of income are liable to be confiscated and as such they have to be retained till the disposal of the case. The counter would rely on a judgment of the Apex Court delivered in STATE OF MAHARASHTRA vs. TAPAS D.NEOGY reported in 2000-2-L.W. (Crl.) 489 wherein the Honourable Apex Court while considering the question `whether a police officer, investigating into an offence can issue prohibitory order in respect of the bank account of the accused in exercise of power under Section 102 of the Criminal Procedure Code', has held:

"The law relating to the prevention of corruption and matters connected therewith were being dealt with by the Prevention of Corruption Act, 1947, which was amended in the year 1964 based on the recommendations of the Santhanam Committee. In the Criminal Law Amendment Ordinance, 1944, there are provisions to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. To make the existing anti

corruption laws more effective by widening their coverage and by strengthening the provisions, the Parliament enacted the Prevention of Corruption Act, 1988, which received the assent of the President of India on September 9th 1988. Under the Act, the definition of the expression "public servant" stood widened and penalty for offences under Sections 161 to 165A of the Indian Penal Code was enhanced. Under Section 13 of the Act, a public servant who commits criminal misconduct, is liable to be punished with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine. Without providing the amount of fine which could be imposed under subsection (2) of Section 13 the legislature have indicated the matters tobe taken into consideration for fixing the fine under Section 16 of the Act and it categorically provides that for fixing the amounts of fine under sub-section (2) of Section 3 or Section 14, the Court shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence. Under Section 18 of the Act, power has been conferred on the Police Officer to inspect any bankers book and to take or cause to be taken certified copies of the relevant entries therefrom and the bank concerned shall be bound to assist the police officer in the exercise of his powers under Section 18. Under section 22 of the Act, the provisions of the Code of Criminal Procedure have been made applicable to any proceeding in relation to an offence punishable under the Act."

"We have analysed the aforesaid provision of the Prevention of Corruption Act, 1988 as in our view the object engrafted in the different provisions of the Prevention of Corruption Act, 1988 has to be taken into account while interpreting the provisions contained in Section 10 2 of the Code of Criminal Procedure."

"There is no specific provision in the Act itself as to how or in what manner the said property can be dealt with by the Investigating Officer even if he comes to the conclusion that the assets in the possession of the `public servant' is directly linked with the commission of the offence. It is therefore, only by applying the provisions of Section 102 of the Criminal Procedure Code if the said provision is held to be conferring power of seizing and or prohibiting operation of bank account, the Investigating Officer can pass order of seizing the bank account or issue prohibitory orders to the banks not allow the account holder to operate the account."

"... It is well known that corruption in public offices has become so rampant that it has become difficult to cope with the same. Then again the time consumed by the Court in concluding the trials is another factor which should be borne in mind in interpreting the provisions of section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused, then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the Courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore persuaded to take the view that the bank account of the accused or any of his relation is `property' within the meaning of

Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offene for which the police officer is investigating into."

On such grounds, the counter would pray to dismiss the above criminal original petition.

7. During arguments, the learned senior counsel appearing on behalf of the petitioner would point out that the authorisation made by the Superintendent of Police, Directorate of Vigillance and Anti Corruption Special Investigation Cell under Section 18 of the Prevention of Corruption Act, 1988 dated 16.8.2002 and the requisition of the Inspector of Police and the Investigating Officer are at variance so far as the crime numbers given therein are concerned. The learned senior counsel would further point out that the authorisation given to the Investigating Officer is dated 16.8.2002 and the letter addressed to the Banks by the Investigating Officer is dated 3.2.2003 i.e. after a long delay of six months thereby freezing the bank accounts as a result of afterthought. The learned senior counsel would then submit that the purpose of authorisation is only regarding two aspects, the first one for the purpose of investigating into the bank account and secondly to take the certified copies of the relevant entries therefrom and the act perpetrated on the part of the Investigating Officer/the first respondent herein in ordering to freeze the accounts is in excess than what he is authorised to do by his superior under Section 18 of the Prevention of Corruption Act, 1988 and the same is illegal; that in spite of Section 102(1) of the Code of Criminal Procedure being mandatory, admittedly, no notice has been given to the petitioner as warranted under the said Section; that the counter is vague and indefinite. At this juncture, the learned senior counsel would cite a Division Bench judgment of the Delhi High Court delivered in Ms.SWARAN SABHARWAL vs. COMMISSIONER OF POLICE reported in 1988 Criminal Law Journal 241 wherein it has been held:

"In case of seizure of a bank account, the police officer should do two things: he should inform the concerned Magistrte forthwith regarding the prohibitory order. He should also give notice of the seizure to the accused and allow him/her to operate the bank account subject to his/her executing a bond undertaking to produce the amounts in court as and when required or to hold them subject to such orders as the court may make regarding the disposal of the same. An order under S.102, without doing so is liable to be set aside."

8. The learned senior counsel citing the above judgment would submit that the mandatory requirements, as emphasized by the above judgment, have not been followed by the first respondent. He would further submit that under Section 18 of the Prevention of Corruption Act, 1988 , regarding the powers to inspect the bank account, an Officer below the rank of Superintendent of Police cannot do, since he has no power or jurisdiction to do so and the first respondent being a mere Inspector of Police based on an authorisation not being specifically made to freeze the bank accounts, he has undoubtedly exceeded in his jurisdiction in violation of his authorisation; that it is not

only the accounts of the petitioner, who is shown as an accused but other five accounts of his family members have been frozen thus causing great hardship and inconvenience to them also. The learned senior counsel would end up his argument praying to allow the petition setting aside the order of the first respondent.

9. In reply, the learned Government Advocate on the criminal side appearing on behalf of the first respondent would submit that the case is under the Prevention of Corruption Act particularly for having assessed and being in possession of wealth disproportionate to the known sources of income of the petitioner and therefore Sections 17 and 18 of the Prevention of Corruption Act are conferring powers to investigate which include inspection of the bank accounts etc. and there is nothing to prevent the Investigating Officer from freezing the accounts; that the Inspector has been empowered by the Superintendent of Police and therefore he is perfectly within his powers and jurisdiction to freeze the bank account which he has done promptly. The learned Government Advocate, relying on the judgment of the Honourable Apex Court reported in 2000-2-L.W. (Crl.)489 (extracted supra while tracing the counter) would end up his argument praying to dismiss the above criminal original petition.

10. Since the respondents 2 and 3 are only formal parties, no notice has been ordered to them.

11. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, it could be gathered that the petitioner is a Member of the Legislative Assembly and is a "public servant" within the meaning of the Prevention of Corruption Act, 1988; that the first respondent has registered a case against the petitioner for the alleged offence punishable under Section 13(2) r/w.13(1)(e) of the Prevention of Corruption Act on allegation that he is in possession of pecuniary resources or property disproportionate to his known sources of income, which he cannot satisfactorily account for.

12. From the import of the Section 13 of the said Act barely dissected, it is clear that Section 13(2) is the penal Section for the commission of an offence under Section 13(1)(e) which offers an opportunity for the public servant to satisfactorily account for either the pecuniary resources or property disproportionate to his known sources of income thereby meaning that in these types of cases of acquisition or being in possession of disproportionate wealth to the known sources of income, the cases could only be registered on reasonable suspicion and could be proved subject to the opportunity for the accused to satisfactorily account for the same and therefore prima facie no case could be made out by the prosecution bluntly either on registering a case or even during the course of investigation since according to the warranting ingredients of the Section, the accused cannot be preliminarily held to have committed the offence as it could be in other cases arising out of the IPC or the other criminal acts or even from out of the Prevention of Corruption Act itself. Therefore, the framers of law have been careful enough to impose a pre-condition or a subjective clause to the effect

that the commission of the offence by the accused could only be complete, provided on a fair and reasonable opportunity being afforded to the public servant in spite of which if he fails to satisfactorily account for the pecuniary resources after the case has been put up by the prosecution but not on a case being registered on suspicion. Therefore, on a case registered on reasonable suspicion of the accused being in possession of property disproportionate to his known sources of income, the pecuniary resources of which he cannot satisfactorily account for, it is not correct to conclude that either the commission of offence is complete as it is in most of the other cases or could it be said that the Investigating Officer shall have all such freedom as he would have in other cases in the exercise of such powers pending investigation.

13. From this background, the case of the petitioner has to be studied in the context of Sections 17 and 18 of the Prevention of Corruption Act and Section 102 of the Code of Criminal Procedure. Regarding the freezing of the bank accounts operated by the petitioner and his family members hitherto, it has become necessary on the part of this Court to ascertain the powers and juris diction of the Investigating Officer particularly in view of the fact that the first respondent/ Investigating Officer is the Inspector of Police in rank, and therefore it is relevant to consider the authorisation granted by the Superintendent of Police, Directorate of Vigillance and Anti corruption Special Investigation Cell and the very freezing order passed by the first respondent.

14. No doubt, the Superintendent of Police, Vigillance and Anti Corruption, in exercise of his powers conferred under Section 18 of the Prevention of Corruption Act, 1988, has empowered the first respondent to investigate an offence specified under Section 17 of the said Act against the petitioner and to exercise powers under Section 18 of the Prevention of Corruption Act `for the purpose of investigation into such offences to inspect any Bankers' Book in so far as they relate to the accounts of the person suspected to have committed those offences and of any other persons suspected to be holding money on behalf of such person and to take or cause to be taken certified copies of the relevant entries, therefrom ... considered necessary for the purpose of the investigation into aforesaid offences.' No explanation need be necessary that the specific acts that the first respondent/ Inspector is empowered to do are spelt out in the above authorisation made by the Superintendent of Police, Vigillance and Anti Corruption Special Cell, in his letter dated 16.8.2002, which does not, in any manner, empower the first respondent to freeze the accounts operated by the petitioner and his family members. 15. However, based on this authorisation given by the Superintendent of Police, Vigillance and Anti Corruption Special Investigation Cell, Chennai, the first respondent has not only carried out the searches at various places during the course of investigation, during which the first respondent would allege that the bank accounts numbering six in different persons' names and businesses have been detected and pursuant to the detection of the operation of the said accounts, the first respondent Inspector of Police has caused the requisition to the respective Banks to freeze the said six accounts and that the account holders should not be allowed to operate the accounts. 16. The point that is to be ascertained is `whether the first

respondent could exercise his power and jurisdiction to that extent as to freeze the accounts of not only the petitioner, who is an accused but also the other family members or the businesses?'

17. At the outset, it may be remembered that the first respondent has not been specifically empowered or authorised to do such acts of freezing the accounts or obstruct the account holders from operating the accounts and while so, it has to be considered `whether the authorisation made by the Superintendent of Police, dated 16.8.2002 implies such powers to be exercised by the first respondent/Inspector of Police, who is empowered to investigate into the case?'

18. The authorisation given by the Superintendent of Police to the first respondent is specific to the effect of carrying out certain acts for the purpose of investigation that is to inspect any bankers' book and to take the copies of the relevant entries therefrom, which are considered necessary for the purpose of the investigation into the aforesaid offences. It could be stated that if freezing of the accounts would have also been thought of by the authorising Officer, in one sentence, he could have included the freezing of the accounts of the petitioner and others also in the said authorisation letter. But it was not intended on the part of the empowering authority, the Superintendent of Police, Vigillance and Anti Corruption Special Investigation Cell and therefore it is safe to conclude that the said Superintendent of Police has not authorised the first respondent/Inspector of Police with such drastic powers to be exercised by him since the empowering officer would have thought of serious consequences to follow in the aftermath of such drastic steps taken by the Inspector of Police. The Superintendent of Police would have also further considered that for the purpose of the case of the possession of disproportionate wealth to the known sources of income, the object sought to be achieved is to prove from the sources of income whether disproportionate wealth has been acquired by the accused or in his possession by inspection of bankers' book and by certified copies of the relevant entries taken and not freezing the accounts or obstructing the account holder from running his life or day-to-day business or in operating the accounts since he is susceptible to be crippled and thrown out of his routine by such unwanted drastic steps falsely initiated by the first respondent without there being anything to achieve by such acts.

19. A case of disproportionate wealth could only be proved from the entries effected in the books of accounts so as to trace the past bank dealings of the accused and of his near relatives during the check period but not freezing the accounts unless the Investigating Officer is of the view that by permitting the accused or his relatives to continue to operate the accounts any damage would be caused to the entries already effected in the past which are relevant for the check period and therefore no purpose is also going to be served in the progress of investigation by freezing the accounts and obstructing the accused and his relatives from operating the accounts abruptly. The net result would be that the daily routine of personal life or business of the account holders would be paralysed with no scope for making

any progress in the investigation by such of the acts of ordering to freeze the accounts. Therefore, at this juncture, the only conclusion that could be arrived at by this Court is that neither the first respondent is authorised to indulge in such acts of freezing the bank accounts of the petitioner and his family members as per the authorisation made by the Superintendent of Police, dated 16.8.2002 nor could the first respondent assume such powers himself and therefore it is safe to conclude that the act perpetrated by the first respondent in freezing the accounts of the petitioner and others listed herebefore is without authorisation and without jurisdiction and they could be termed only as illegal. 20. At this juncture, it is relevant to point out from the proviso to Section 18 of the Prevention of Corruption Act, 1988 which is specific to the effect that `no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.' No clarification is required that this proviso to Section 18 requires special authorisation by officer not less than the rank of Superintendent of Police to any police officer who is below the rank of Superintendent of Police. Since as aforementioned, the first respondent is not specifically authorised by the Superintendent of Police, the requisition made by him to the banks to freeze the accounts of the petitioner and others mentioned in his letter dated 3.1.2003 is an act done in excess than what he was empowered or not authorised to and the same is illegal.

21. Yet another legal aspect pointed out on the part of the petitioner by his counsel is the procedure that is to be adopted on seizure of bank account. In case of seizure of a bank account, the police officer should do two things: he should inform the concerned Magistrate forthwith regarding the prohibitory order. He should also give notice of the seizure to the accused and allow him/her to operate the bank account subject to his/her executing a bond undertaking to produce the amounts in court as and when required or to hold them subject to such orders as the court may make regarding the disposal of the same. An order under Section 102, without doing so is liable to be set aside, as held in Ms.SWARAN SABHARWAL vs. COMMISSIONER OF POLICE reported in 1988 Crl.L.J.241 (Delhi) (extracted supra). This procedure that is to be followed and felt mandatory has also not been followed by the first respondent.

22. The learned Government Advocate on the criminal side, however, pressed into service a judgment of the learned single Judge of this Court delivered in C.ARANGANAYAGAM vs. STATE, BY DIRECTORATE OF VIGILLANCE AND ANTI CORRUPTION, ERODE DETACHMENT, ERODE AND ANOTHER reported in 2000 MLJ (crl.)20 where, in a case registered by the Directorate of Vigillance and Anti Corruption for the commission of the offence on the part of the accused under Section 13(2) r/w.13(1)(3) of the Prevention of Corruption Act, the learned single Judge, has arrived at the conclusion that "Every Police Officer acting under Section 102(1) Cr.P.C. shall forthwith report the seizure to the Magistrate having jurisdiction. Simply because the first respondent failed to comply with Section 102(3), Criminal Procedure Code, the entire freezing of the account is not vitiated." However, it should be borne in mind that the main question involved in the case in hand is whether the Inspector of Police

was specifically authorised by the Superintendent of Police to freeze the accounts of the petitioner and his family members and not the rights of the

Police Officer under Section 102 Cr.P.C. Therefore, the proposition held in the above judgment is not at all coming to the rescue of the case of prosecution in any way.

23. In short, neither the first respondent is having the locus standi to freeze the bank accounts himself since not being an officer of the rank of the Superintendent of Police or above nor has he been specifically authorised to freeze the accounts or to prohibit the petitioner and others from operating their bank accounts nor is the act of freezing the account required in the circumstances of the case registered and investigated into since the object sought to be achieved by the Investigating Officer in freezing the said bank account is nil and therefore it is only proper to conclude that the act of the first respondent in requesting the respondents 2 and 3 to freeze the accounts of the petitioner and others as per his letter dated 3.1.2003 and not to allow them to operate the said accounts pertaining to the subject of investigation in the case of disproportionate assets and directed in reference Cr.No.13/2002/Pub/HQ, under Section 13(2) r/w.13(1)(e) of the Prevention of Corruption Act, 1988 by the first respondent is arbitrary and illegal and bereft of authority or authorisation and the said direction issued to the respondents 2 and 3, wherein the six items of accounts mentioned in the petition are being maintained by the respective account holders, is hereby set aside. In result, (i) the above criminal original petition succeeds and the same is allowed. (ii)The direction issued by the first respondent in the requisition letter dated 3.1.2003 to the respondents 2 and 3 to freeze the bank accounts of the petitioner and his family members and to restrain them from operating the said accounts is set aside.

Consequently, Crl.M.P.No.1503 of 2003 is closed.

Index: Yes
Internet: Yes
Rao

To
1.The Inspector of Police, Vigillance & Anti Corruption, Special Investigation Cell,Chennai-35.

2.The Branch Manager, Indian Overseas Bank, Periyar Nagar Branch, Chennai-82.

3.The Branch Manager, Allahabad Bank, Jawahar Nagar Branch, Chennai-82.

4.The Public Prosecutor, High Court, Madras.

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